

Introduced by Senator Wolk

February 27, 2009

An act to add Section 1923.1 to the Civil Code, relating to reverse mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 660, as introduced, Wolk. Reverse mortgages.

Existing law defines and regulates reverse mortgage loans and provides a disclosure notice that a lender must provide an applicant, which informs the applicant that a reverse mortgage is a complex financial arrangement and advises the applicant of the wisdom of seeking financial counseling before entering the agreement. Existing law requires a lender to refer a prospective borrower to a housing counseling agency for counseling, as specified, prior to accepting a final and complete application for a reverse mortgage or assessing any fees.

This bill would provide that a lender, broker, person, or entity who recommends the purchase of a reverse mortgage owes the prospective borrower a duty of honesty, good faith, and fair dealing. The bill would require that a lender, broker, person, or entity that recommends the purchase of a reverse mortgage have reasonable grounds for believing that the reverse mortgage is suitable for the prospective borrower and to make reasonable inquiries to determine suitability. The bill would require that the suitability of a recommended purchase of a reverse mortgage be determined, with reference to the totality of the particular borrower's circumstances, goals, and needs and establishes specified criteria for the purpose of making this evaluation. The bill would provide that recommendation of the purchase of a reverse mortgage that is found to be unsuitable constitutes a breach of the duty of honesty, good faith, and fair dealing. The bill would permit any person injured as a result

to bring a civil action for damages. The bill would require a lender, broker, person, or entity that recommends the purchase of a reverse mortgage to develop and maintain a system to achieve compliance with its provisions, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1923.1 is added to the Civil Code, to
2 read:

3 1923.1. (a) Any lender, broker, person, or entity who
4 recommends the purchase of a reverse mortgage owes the
5 prospective borrower a duty of honesty, good faith, and fair
6 dealing. These duties are in addition to any other duties, express
7 or implied, that may exist.

8 (b) Any lender, broker, person, or entity that recommends the
9 purchase of a reverse mortgage shall have reasonable grounds for
10 believing that the reverse mortgage is suitable for the prospective
11 borrower and shall make reasonable inquiries to determine
12 suitability. The suitability of a recommended purchase of a reverse
13 mortgage shall be determined, with reference to the totality of the
14 particular borrower's circumstances, goals, and needs, including,
15 but not limited to, the following:

16 (1) Whether the homeowner intends to reside in the property
17 on a long-term basis.

18 (2) Alternatives to the reverse mortgage that would serve a
19 substantially similar purpose. These alternatives may include, but
20 are not limited to, low-cost housing rehabilitation grants and public
21 loans, tax postponement, or government aid programs.

22 (3) Whether the homeowner is planning to use the proceeds of
23 the reverse mortgage loan to purchase a product, including, but
24 not limited to, annuities or investments, that is not appropriate for
25 the homeowner.

26 (4) If the borrower intends to use funds obtained from a reverse
27 mortgage to purchase investments, a determination of whether the
28 cost of obtaining the reverse mortgage outweighs the anticipated
29 earning from the investment.

1 (5) If the homeowner will use the proceeds of the reverse
2 mortgage loan to purchase a long-term care insurance product, an
3 evaluation if that product is appropriate for the homeowner.

4 (6) The borrower's apparent physical health and probability for
5 living independently into the foreseeable future.

6 (7) The borrower's marital status and the impact of the reverse
7 mortgage on the future economic security of a spouse or dependent.

8 (8) The borrower's ability to pay for long-term care services,
9 whether institutional or community-based, once the borrower
10 exhausts his or her equity in the home.

11 (9) How a reverse mortgage will affect the borrower's eligibility
12 for receiving government benefits, including, but not limited to,
13 Medi-Cal benefits.

14 (10) The borrower's intent to pass the residence to an heir and
15 the impact of any reverse mortgage on his or her ability to
16 accomplish this.

17 (11) Whether a resident of the property who is not the
18 homeowner would be displaced at the maturity of the loan, against
19 the homeowner's wishes, because he or she will not be able to pay
20 off the reverse mortgage loan.

21 (12) With regard to name removals:

22 (A) Was another homeowner removed from title prior to or
23 during underwriting?

24 (B) Was the removed homeowner under the age of 62?

25 (C) Was the removed homeowner significantly younger than
26 the remaining homeowner?

27 (D) Is there any reason to believe that the removed homeowner
28 will outlive the remaining homeowner?

29 (E) Was the removed homeowner fully apprised of the legal
30 ramifications of being removed from title, including, but not limited
31 to, the consequences upon the death of the remaining homeowner
32 or upon a divorce settlement.

33 (13) Whether the homeowner is fully aware of all loan costs
34 and the method by which costs will be paid.

35 (c) Any lender, broker, person, or entity that recommends the
36 purchase of a reverse mortgage shall develop and maintain a system
37 to achieve compliance with this section, including, but not limited
38 to, maintaining written procedures and conducting periodic reviews
39 of its records that are reasonably designed to detect and prevent
40 violations of this section.

- 1 (d) The recommendation of the purchase of a reverse mortgage
- 2 in violation of subdivision (b) constitutes a breach of the duty of
- 3 honesty, good faith, and fair dealing, and any person injured as a
- 4 result of the breach may bring a civil action for damages.

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